The trial judge, in our opinion, directed the jury on common intention in accordance with the law as laid down in *Mahbub Shah's* case, *supra*, and this being so it cannot be said that he failed to direct the jury adequately on the question of common intention.

We have earlier set out at some length the evidence before the jury and in our opinion there was ample evidence to justify the verdict of the jury that the appellants were guilty of murder under section 302 read with section 34 of the Penal Code. We would accordingly dismiss the appeals of both appellants.

Appeals dismissed.

Solicitors: *David Marshall; Ibrahim & Almenoar.*

Re will of P. M. FRAMROZ, DECD.; CHARTERED BANK (M) TRUSTEE LTD. v. S. F. FRAMROZ & ORS.

[O.C.J. (Wee Chong Jin C.J.) November 26, 1969]

[Singapore — Originating Summons No. 151 of 1969]

Wills — Construction of will — Intention of testator.

In this case the testator had devised a portion of the income from a private company of which he was the proprietor and beneficial owner to his nephew, R.P.G. with the proviso that "on the death of the said R.P.G. the share of the income which would be payable to him if he had been living shall be paid to the said S.F.F. or if she shall then be deceased to her two daughters." R.P.G. pre-deceased the testator but S.F.F. survived both the testator and R.P.G. The will contained a demise of the residue to the Singapore Association for the Blind. In this application the trustees of the will of the testator asked for the determination of the questions whether the estates of S.F.F. were entitled to the shares of the income under clause 3 (1) (b) proviso (iii) of the will or whether the same should be paid to the Singapore Association for the Blind.

Held: on the true construction of the will and having regard to the general scheme of the will and all the relevant circumstances, the two daughters do not take the share in the income on the death of their mother and the share should be paid to the Singapore Association for the Blind.

Case referred to:-

(1) *Perrin* v. *Morgan* [1943] A.C. 399.

ORIGINATING MOTION.

A. C. Ferguson for the plaintiffs (trustees)

Y. R. Jumabhoy for the daughters of Shirinbai Framroz Framroz.

P. Selvadurai for the Singapore Association for the Blind.

Isaac Paul Retnam (State Counsel) for the Attorney-General.

Cur. Adv. Vult.

Wee Chong Jin C.J.: This is an application by the plaintiffs, the trustees of the Will of Phirozshaw Maneckji Framroz, deceased, for the determination of the following questions and for the following reliefs: —

1. Whether upon the true construction of clause 3 (I) (b) proviso (iii) of the will of Phirozshaw Maneckji Framroz deceased dated the 11th June, 1956, Sheroo Framroz Framroz and Diana D. Anklesaria formerly Diana Framroz Framroz, or the survivor or survivors of them in equal shares and proportions, are entitled to the share of the income which would be payable to Rustam Pestonji Gandhi notwithstanding that Shirinbai Framroz Framroz, the mother of the said Sheroo Framroz Framroz and Diana D. Anklesaria formerly Diana Framroz Framroz, did not pre-decease the said Rustam Pestonji Gandhi.
2. If the answer is in the negative whether the same shall be paid to the treasurer of the Singapore Association for the Blind described in the said will as the Singapore Institute for the Blind.

Having considered the numerous authorities to which my attention has been drawn during the argument, I think that it is only necessary to refer to one and to deal with it before examining the language of the deceased's will. That authority is *Perrin* v. *Morgan*[1] a case in which the House of Lords was concerned with the meaning of the word "moneys" as used in a will which directed that "all moneys of which I die shall be shared by my nephews and nieces now living".

Viscount Simon, L.C. at p.406 said: —

"My Lords, the fundamental rule in construing the language of a will is to put on the words used the meaning which, having regard to the terms of the will, the testator intended. The question is not, of course, what the testator meant to do when he made his will, but what the written words he uses mean in the particular case — what are the 'expressed intentions' of the testator".

Lord Atkin at p.414 said: —

"... the construing court has to ascertain what was meant, being guided by the other provisions of the will and the other relevant circumstances, including the age and education of the testator, his relations to the beneficiary chosen, whether of kinship or friendship, the provision for other beneficiaries, and other admissible circumstances. Weighing all these, the court must adopt what appears the most probable meaning. To decide on proven probabilities is not to guess but to adjudicate. If this is to decide according to the 'context', I am content, but I cannot agree that the court is precluded from looking outside the terms of the will. No will can be analysed *in vacuo*. There are material surroundings such as I have suggested in every case, and they have to be taken into account. The sole object is, of course, to ascertain from the will the testator's intentions'.

Lord Thankerton at p.416 said: —

"Their meaning is of course to be collected from the context, the place where, and the subject in regard to which, they are used; and the question is neither what the testator meant, apart from the words, nor what the words might mean, apart from intention, but what the testator meant by using them".

Lord Romer at p.420 said: —

"My Lords, I take it to be a cardinal rule of construction that a will should be so construed as to give effect to the intention of the testator, such intention being gathered from the language of the will read in the light of the circumstances in which the will was made. To understand the language employed the court is entitled, to use a familiar expression, to sit in the testator's armchair. When seated there, however, the court is not entitled to make a fresh will for the testator merely because it strongly suspects that the testator did not mean what he has plainly said — that he was, in fact, one of those persons of whom Knight Bruce L.J. said that they spoke as if the office of language were to conceal their thoughts. In many of the cases to be found

in the books the court is reported to have said that the construction it has put on a will has probably defeated the testator's intention. If this means, as it ought to mean, that the court entertains the strong suspicion to which I have just referred, no sort of objection can be taken to it, but if it means that the court has felt itself prevented by some rule of construction from giving effect to what the language of the will, read in the light of the circumstances in which it was made, convinces it was the real intention of the testator, it has misconstrued the will".

The testator who made his will on the 11th June 1956 died a bachelor on 29th May 1960. Rustam Pestonji Gandhi, a nephew of the testator who was alive at the date of the testator's will, predeceased the testator, having died a bachelor on 23rd March 1959 at the age of 78. Shirinbai Framroz Framroz, a widowed sister-in-law of the testator, survived both the testator and Rustam Pestonji Gandhi and died on 3rd February 1966.

One of the testator's main assets was a private limited company, Framroz Limited of which he was "the proprietor and beneficial owner". By clause 3 of his will made on 11th June 1956 he gave, devised and bequeathed all his shares in this company to his trustees as follows: —

"3. *I give devise* and *bequeath* all my shares in Framroz Limited of which company I am the proprietor and beneficial owner unto my trustee *and I direct* that my trustee shall retain the said shares until the death of the last survivor of the persons named in this my will (hereinafter called 'the trust period') without being responsible for loss and with the powers and authority more particularly described in clause 4 hereof *provided always* that if in the opinion of my trustee and the board of directors of the company the said company can no longer be carried on at a profit then nothwithstanding that the period aforesaid shall not have expired my trustee may sell the said shares in such manner as they shall in their absolute discretion think proper and without being liable to account for any loss in respect thereof.

I. *Upon trust* to pay the sums received as dividends or as return of capital on the said shares or in the event of sale the income from the investments representing the proceeds thereof (hereinafter called 'the income') as to three equal one-fourth parts thereof in manner following that is to say:—

(a) the sum of Rupees Three hundred (Rs. 300/-) each quarter or its equivalent in Malayan Currency to each of the following beneficiaries that is to say:—

(1) Ghaver Dossabhoy Gordhan
of Parsi Pamchyat Block, 696, Parsi Colony, Dadar, Bombay.

(2) Dhunmai Behramji Framroz
of Khareghat Colony, Tarachand Block, Chowpatty, Bombay.

(3) Ketti Savax Merchant
of Khareghat Colony, Tarachand Block, Chowpatty, Bombay.

(4) Sarosh Sorabji Framroz
of 64A, Sital Nivas, Walkeshwer Road, Bombay, and

(5) Piroja Framroz Karani
of Bridge View, Grant Road, Bombay - 7.

during their life time and —

(b) the balance of the three equal one-fourth parts of the income to be divided equally between the following five beneficiaries that is to say:—

(1) Tehmina Behramji Cooper
of 33, Balaram Building, Grant Road, Bombay - 7.

(2) Shirinbai Framroz Framroz
of 7, Fredrick Terraces, 4 Mahatma Gandhi Road, Poona - 1.

(3) Rustam Pestonji Gandhi
of Rashid Mansion, Colaba Road, Bombay - 1.

(4) Minocheher Pestonji Gandhi
of Meher Lodge, 799, Parsi Colony, Dadar, Bombay, and

(5) Jamshed Pestonji Gandhi
of Rustom Baug, Block 15, Byculla, Bombay.

Provided always:-

(i) that on the death of the said Tehmina Behramji Cooper the share of the income which would be payable to her if she had been living shall be paid to her four children namely:—

(1) Jal Behramji Cooper
of 33, Balaram Building, Grant Road, Bombay - 7.

(2) Minocheher Behramji Cooper
of 33, Balaram Building, Grant Road, Bombay - 7.

(3) Maneckji Behramji Cooper
of 33, Balaram Building, Grant Road, Bombay - 7, and

(4) Hilia Phiroze Shroff
of Jaiji Terraces, Slater Road, Bombay - 7.

or the survivor or survivors of them in equal shares or proportions and —

(ii) on the death of the said Shirinbai Framroz Framroz the share of the income which would be payable to her if she had been living shall be paid to her two daughters namely:—

(1) Sheroo Framroz Framroz
of 7, Fredrick Terraces, 4 Mahatma Gandhi Road, Poona - 1, and

(2) Diana Framroz Framroz
of 7, Fredrick Terraces, 4 Mahatma Gandhi Road, Poona - 1.

or the survivor or survivors of them in equal shares or proportions and —

(iii) on the death of the said Rustam Pestonji Gandhi the share of the income which would be payable to him if he had been living shall be paid to the said Shrinibai Framroz Framroz or if she shall then be dead to her two daughters namely:—

(1) Sheroo Framroz Framroz
of 7, Fredrick Terraces, 4 Mahatma Gandhi Road, Poona - 1, and

(2) Diana Framroz Framroz
of 7, Fredrick Terraces, 4 Mahatma Gandhi Road, Poona - 1.

in equal shares and proportions or to the survivor or survivors of them and —

(iv) on the death of the said Minocheher Pestonji Gandhi the share of the income which would be payable to him if he had been living shall be paid to:—

(1) his widow Perin Minocheher Gandhi
of Meher Lodge, 799, Parsi Colony, Dadar, Bombay.

(2) his son Ardesher Minocheher Gandhi
of Meher Lodge, 799, Parsi Colony, Dadar, Bombay, and

(3) his daughter Sirinbai Minocheher Gandhi
of Meher Lodge, 799, Parsi Colony, Dadar, Bombay.

in equal shares and proportions or to the survivor or survivors of them and

(v) on the death of the said Jamshed Pestonji Gandhi the share of the income which would be payable to him if he had been living shall be paid to his two sisters and one brother that is to say:—

(1) Banoo Pestonji Gandhi
of Rustom Baug, Block 15, Byculla, Bombay.

(2) Pirojbai Pestonji Gandhi
of Rustom Baug, Block 15, Byculla, Bombay, and

(3) Khurshed Pestonji Gandhi
of Rustom Baug, Block 15, Byculla, Bombay..

in equal shares and proportions or to the survivor or survivors of them.

(c) And as to the remaining equal one-fourth share and any share of the income no longer payable under clause I (a) and (b) thereof to pay the same to the treasurer of the Singapore Institute for the Blind.

II. *Upon trust* upon the expiration of the trust period to hold the whole of the said shares or if sold the proceeds thereof and the investments representing the same *in trust* for the said Singapore Institute for the Blind absolutely."

The rest and residue of his entire estate, by clause 5 of his will, went to the "Singapore Institute for the Blind" absolutely. Clause 5 reads as follows:—

"I *give devise* and *bequeath* all the rest residue and remainder of my real and personal estate whatsoever and wheresoever situate unto my trustee *upon trust* to sell the said real estate and to call in sell and convert into money such part of my personal estate as does not consist of money with power to postpone such sale and conversion for such period as my trustee without being liable to account may think proper *upon further trust* out of the monies to arise from the sale and conversion of my said real and personal estate and out of my ready money to pay my funeral and testamentary expenses death duties and my debts and to stand possessed of the residue remaining in its hand *in trust* for the Singapore Institute for the Blind absolutely".

The problem I have to decide, in the events that have happened, is whether under clause 3 (I) (b) proviso (iii) of the testator's will the two named daughters of Shirinbai Framroz Framroz are entitled upon the death of their mother to the share of the income bequeathed to Rustam Pestonji Gandhi under clause 3 (I)(b).

Confining myself entirely to the language of the testator's will, the answer to the problem must, in my opinion, be in the negative. It seems to me that the language used by the testator in proviso (iii) of clause 3 (I) (b) read with the other four provisoes of clause 3 (I) (b) and with clause 3 (I) (c) has, in plain and clear terms, expressed his intention. The word "then" in the phrase "or if she shall then be dead" in proviso (iii) grammatically refers back to the earlier part of the proviso, namely, on the death of Rustam Pestonji Gandhi. In my judgment, the testator was using and intended to use the word "then" in that sense in this proviso in the will. In the events that have happened the two daughters do not take Rustam Pestonji Gandhi's share on the death of their mother and Rustam Pestonji Gandhi's share devolves under clause 3 (I) (c).

It is argued on behalf of the daughters of Shirinbai, having regard to the general scheme of the will and all the relevant circumstances including the circumstances in which the will was made, the position of the testator, his relationship to them and their mother and their circumstances, together with the provision for other beneficiaries, that the testator intended to benefit his relatives particularly his widowed sister-in-law and her children and more particularly her children after her death so that the court ought to construe the phrase "or if she shall then be dead" as if the testator meant "and on her death". I am unable to accept this contention. It seems to me perfectly clear from the terms of the testator's will that the main object of the testator's bounty was the "Singapore Institute for the Blind" and in my judgment the expressed intentions of the testator having regard to the terms of the will require me to answer the first question in the negative and the second question in the affirmative.

Questions answered.

Solicitors: *Drew & Napier; Mallal & Namazie; Rodyk & Davidson.*

GOH AH TIN & ORS. v. PUBLIC PROSECUTOR

[A.Cr.J. (Syed Othman J.) November 27, 1969]

[Johore Bahru — Criminal Appeal No. 53 of 1968]

Customs and Excise — Importing prohibited goods — Meaning of "prohibited goods" — Order made prohibiting removal of swine into and out of State — Animals Ordinance, 1953, s. 36 — Custom Ordinance, 1952, s. 131 (1).

Import and Export — Prohibited goods — Order prohibiting removal of swine.

This was an appeal against the convictions of the appellants under section 131 (1) (iii) of the Customs Ordinance, 1952, for being concerned in importing prohibited goods, to wit, 72 pigs. By reason of the existence of swine fever the Menteri Besar of Johore had made an order under section 36 (1) of the Animals Ordinance, 1953, prohibiting the removal into and out of the State of any swine.

Held: (1) as the order of the Menteri Besar in this case did not prohibit the importation or exportation of goods, the pigs in this case were not "prohibited goods" within the meaning of the Customs Ordinance, 1952;

(2) the convictions must therefore be quashed and the appellants retried on a proper charge under the Animals Ordinance, 1953.

MAGISTRATE'S CRIMINAL APPEAL.

Charles N. Mendis for the appellant.

Mohamed Noor bin Ahmad (Deputy Public Prosecutor) for the respondent.

Syed Othman J.: The charge against the appellants was as follows:

"That you (1) Chia Chee Kwang, (2) Goh Ah Tin, (3) Tan Juak Kiang and (4) Goh Hai Chui, at about 12.55 a.m. on 25.8.67 at Tanjong Petrie, Johore Bahru, in Motor Tongkang No. SC 9851, were concerned in importing prohibited goods, to wit 72 pigs, the import of which into the State of Johore is prohibited except under and by virtue of a written permission granted by or on behalf of the State Veterinary Officer, Johore, under section 36 (1) of the Animals Ordinance of 1953 (J.P.U. 14 dated 13.5.67) contrary to section 131 (1) (a) and punishable under Section 131 (1) (iii) of the Customs Ordinance, 42 of 1952."

They claimed trial at the conclusion of which the learned president, sessions court, convicted and fined the first appellant $8,200 in default, 2 years imprisonment and the second and third defendants $5,000 each in default, 2 years imprisonment.

When the appeal came up before me I set aside the conviction, sentences and other orders of the learned president sessions court relating to the case and ordered that the appellants be retried on a proper charge under the Animals Ordinance, 1953. My reasons for so doing are as follows:—